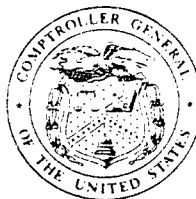


**DECISION**



*17344 17404*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-200996, B-200997 DATE: March 18, 1981

MATTER OF: Martin J. Simko Construction, Inc.

**DIGEST:**

1. <sup>*Alleging*</sup> [Protest that successful bids were nonresponsive] for alleged failure to bid on additive items is denied. Contracting agency determined not to accept any additive items, properly determined lowest bids on basis of work actually to be awarded (base bid item), and made awards on basis of lowest bids for base bid items.
2. Where, under Additive or Deductive Items clause, funding available before bid opening was insufficient to cover even lowest base item bid, award may properly be made if funds are subsequently acquired only to bidder submitting lowest base bid.

Martin J. Simko Construction, Inc. (Simko), [protests against the award of two construction contracts] to E.L. Shea, Inc. (Shea), under invitations for bids (IFB) Nos. N62472-80-B-0069 (IFB-0069) and N62472-80-B-0094 (IFB-0094) issued by the Department of the Navy, Naval Facilities Engineering Command. Simko [contends that because Shea did not bid on all the bid items in either IFB, its bids should have been rejected as nonresponsive and the improperly awarded contracts should be terminated and awards made to Simko.]

[Each IFB solicited a base bid (item 1) for the entire work, exclusive of work to be performed under items 2 through 4 which [were additive bid items] for

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additional desired features of construction. The IFB's provided that the control amount, the funds available for each project, was to be recorded prior to and announced at the bid opening, pursuant to Defense Acquisition Regulation (DAR) § 2-201(b)(xli), Defense Acquisition Circular (DAC) No. 76-17, September 1, 1978, and that the low bidder was to be determined in accordance with clause 21, "Additive or Deductive Items," of the IFB's instructions to bidders. The clause provides, in pertinent part, as follows:

"The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus \* \* \* those additive \* \* \* bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. \* \* \*"  
(Emphasis added.)

The control amounts for the projects were \$95,715 for IFB-0069 and \$95,217 for IFB-0094 and the following bids were received at the bid openings:

#### IFB-0069

<u>Bidder</u>	<u>Item 1</u>	<u>Item 2</u>	<u>Item 3</u>	<u>Item 4</u>
Shea	\$100,000	- 0 -	- 0 -	- 0 -
Simko	129,488	\$8,700	\$5,600	\$7,000
Charwill Construction Co.	133,666	3,600	3,890	6,240

#### IFB-0094

<u>Bidder</u>	<u>Item 1</u>	<u>Item 2</u>	<u>Item 3</u>	<u>Item 4</u>
Shea	\$100,000	- 0 -	- 0 -	- 0 -
Atlantic Builders, Inc.	109,829	- 0 -	- 0 -	- 0 -
Simko	137,488	\$5,000	\$3,300	\$7,500
Charwill Construction Co.	143,646	4,047	4,480	4,562
C.M. Builders, Inc.	146,874	2,097	5,008	6,223

The Navy awarded contracts to Shea under each IFB for item 1 in the amount of \$100,000, after additional funding was made available for award in that amount.

[Simko takes the position that] paragraph 2(b) of section 00101 of the IFB, which provides that "bidders shall state prices for each basis for bid given hereinafter," requires that bidders bid on all bid items, and that Shea's failure to bid on items 2 through 4 of either IFB rendered its bids nonresponsive.) Similarly, Simko argues that Atlantic Builders' bid in response to IFB-0094 is also nonresponsive, leaving Simko the low responsive bidder. [The protester states that previously the Navy has immediately disqualified bids which did not include bid prices for all items in the manner set forth in the IFB,] and that paragraph 5(b) of Standard Form (SF) 22, Instructions to Bidders (Construction Contract), included in the IFB explicitly provides that a bid which is not completed for all items under bid instructions "will be disqualified." [Simko asserts that contrary to the terms of the Additive and Deductive Items clause, the Navy obtained additional funds and made awards to Shea in amounts exceeding the pertinent control amounts. Simko also claims that the rapidity with which the awards were made to Shea indicates that the Navy waived its past practice of refusing to make award until it received written confirmation of the bids notwithstanding the fact that Shea's bid prices were almost 30 percent below those of the next low bidder. Finally, Simko questions the fact that Shea bid the same price for two completely different projects at two different locations.)

[The Navy contends that the bidders' insertion "0" in response to items 2 through 4 of the IFB's did not render their bids nonresponsive because the pertinent control amounts dictated that only the base items bid could be considered and, therefore, the awards were properly made to Shea,] citing our decision in Castle Construction Company, Inc., B-197446, July 7, 1980, 80-2 CPD 14. However, Simko asserts that the Navy's reliance on Castle Construction Company, Inc., supra, is misplaced because, unlike Shea and Atlantic, the successful bidder inserted dollar prices in response to the additive bid items on the solicitation in question.

Contrary to Simko's assertion, [we have held that where, as here, a solicitation which contains paragraph 5(b) of SF 22 does not elsewhere explicitly require bidding on all items, insertion of other than a dollar price for additive bid items does not render a bid nonresponsive.] Mitchell Brothers General Contractors, B-192428, August 31, 1978, 78-2 CPD 163.

Under the circumstances we cannot agree that the entry "0," rather than a dollar price in response to the additive bid items makes the bids nonresponsive. We have held that when a bidder does not bid on additive items, [the firm runs the risk that its bid will be eliminated from consideration as nonresponsive due to the omission only if the evaluation process dictates acceptance of items on which the firm did not bid.] Castle Construction Company, Inc., supra; C.T. Bone, Inc., B-194436, September 12, 1979, 79-2 CPD 190; Mitchell Brothers General Contractors, supra. In both procurements to which Simko objects, however, bid evaluation pursuant to clause 21 and the pertinent control amount did not permit acceptance of the items upon which Shea and Atlantic bid "0." [We therefore conclude that their bids were properly determined to be responsive to the IFB's.

Simko apparently believes that regardless of the fact that the control amount in each procurement is not sufficient to permit an award of any of the additive bid items, award must be made on the basis of the aggregate low bid for all four bid items. [We cannot agree with the protester's characterization of the terms of the solicitations and the bids of Shea and Atlantic.] We believe that the IFB's unequivocally stated that the awardee would be selected in accordance with the method prescribed in the Additive or Deductive Items clause and could not reasonably be construed to require an "all or none" bid. Utley-James, Inc., B-198406, June 16, 1980, 80-1 CPD 417. [We have consistently held that bids are to be evaluated on the basis of the work to be contracted for because any evaluation which considers more than the work to be contracted for in determining the lowest bidder

does not accurately assess bid prices and fails to obtain the benefits of full competition which is one of the primary purposes of Federal procurement laws and regulations.) Castle Construction Company, Inc., supra; 50 Comp. Gen. 583, 585 (1971).

With regard to the amount of the awards [ we have held that where funds determined available before bid opening are not sufficient to cover the lowest base bid, a bidder may nonetheless be selected for award under the Additive or Deductive Items clause and award can be made if funds can be obtained only to the bidder submitting the lowest bid on the least work.] Utley-James, Inc., supra; B-170795, October 6, 1970; DAR § 2-201(b)(xli), DAC No. 76-17, September 1, 1978. Because the applicable control amounts were not sufficient to cover Shea's low base bids and the Navy selected Shea for the awards pursuant to the clause, [the awards could properly be made only to Shea (the lowest bidder) on the base bid item (the least work) when funds in the amount of \$100,000 were obtained for each project.)

Simko's contentions concerning the relationship of Shea's bid prices to those of the other bidders and the fact that Shea bid the same price on both IFB's appear to question the reasonableness of Shea's bid prices as well as Shea's ability to perform the work at the price bid.] Price reasonableness is, however, a determination within the contracting officer's discretion prerequisite to the making of an award and our Office will object to the contracting officer's finding only upon a showing of bad faith or fraud, which has not been made here. DAR §§ 2-404.1(b)(vi) and 2-404.2(e), DAC No. 76-17, September 1, 1978; Harris Systems Pest Control, Inc., B-198745, May 22, 1980, 80-1 CPD 353; Penn Landscape & Cement Work, B-196352, February 12, 1980, 80-1 CPD 126. Whether Shea is capable of performing the work at the price bid is a matter of responsibility. The award of a contract imports an affirmative determination of the successful bidder's responsibility, and our Office does not review protests concerning affirmative determinations of responsibility absent allegations of fraud on the part of

contracting officials or of the failure to apply definitive responsibility criteria. Advertising Distributors of Washington, Inc., B-187070, February 15, 1977, 77-1 CPD 111. Finally, whether Shea fulfills its contractual obligations at the price bid is a matter for the contracting agency in the administration of the contracts. Bayou State Trucking Inc.--Reconsideration, B-198850, August 29, 1980, 80-2 CPD 158.

The protests are denied.]

*Milton J. Aorlan*

Acting Comptroller General  
of the United States